IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.460 OF 2005

M/s.R. Kantilal & Co. .. Petitioner.
V/s.
Commissioner of Income-tax
& Others .. Respondents.

Mr.S.M. Lala i/b. Mr.S.M. Sarang for the petitioner.

Mr.A.S. Rao for the respondents.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 5TH APRIL, 2005.

P.C. :

Heard.

2. Rule.

3. The advocate on record for the revenue waives service. Heard finally by consent of parties.

5. Having taken into consideration the relevant aspects, we are of the view that the application made by the petitioner on September 10, 1997 seeking extension under Section 80HHC (2)(a) for realisation of outstanding export proceeds requires reconsideration. It appears from the available record that for the exports, the payment has been received on various dates reflected in Exhibit 'K' annexed to the petition. The payments that has been

received are, however, delayed. The explanation given by the assessee for delayed receipt of proceeds for exports vide aforesaid invoices was, "due to slackness in the diamond industries and they are also facing financial crisis". The Commissioner seems to have overstretched the matter by observing that assessee ought to have established with evidence that he was unable to bring the convertible foreign exchange for the reasons beyond control. The assessee's explanation that it was due to Asian Currency crises in South-East Asian Countries and devaluation of Hongkong dollar suggests that it was beyond assessee's control. The matter requires consideration by the Commissioner of Income Tax, Mumbai City XVI, Mumbai.

6. We, accordingly, set aside the order dated March 15, 2004 impugned in the writ petition and direct the Commissioner of Income Tax, Mumbai City XVI, Mumbai to reconsider the petitioner's application dated September 10, 1997 seeking extension under Section 80HHC (2)(a) in accordance with law.

7. Rule is disposed of accordingly. No costs.

****